REMARKS

At the time of the Office Action dated April 8, 2005, claims 1-20 were pending and rejected in this application.

CLAIMS 1-20 ARE REJECTED UNDER 35 U.S.C. § 103 FOR OBVIOUSNESS BASED UPON SCHEUSSLER ET AL., U.S. PATENT NO. 6,366,950 (HEREINAFTER SCHEUSSLER), IN VIEW OF BURGESS ET AL., U.S. PATENT NO. 5,796,633 (HEREINAFTER BURGESS)

On pages 3-8 of the Office Action, the Examiner concluded that one having ordinary skill in the art would have been motivated to modify Scheussler in view of Burgess to arrive at the claimed invention. This rejection is respectfully traversed.

To teach the limitations recited in independent claims 1 and 10, the Examiner specifically cited column 3, lines 40-47 of Scheussler and column 4, lines 50-51 of Burgess, which are respectively reproduced below for ease of reference:

> The first computer encloses the identification number to a message for sending over the communications medium. The second computer is connectable to the communications medium to receive the message and to retrieve the identification number from the message. The second computer comprises a database configured to process the identification number of the first computer to identify the first computer. (column 3, lines 40-47 of Scheussler)
> Monitoring and tracking listener 18 receives messages and data from monitoring and tracking agent 16. Monitoring and tracking listener 18 also dispatches data and messages to one or more plug-in listener extensions 20. (column 4, lines 48-51 of Burgess)

As apparent from a review of the citations, the claimed invention, as recited in claims 1 and 10 would not result from the Examiner's proposed combination of Scheussler and Burgess.

Independent claims 1 and 10 each recite "determining whether it is required to preserve the message order," thus a determination is made as to whether or not message order is to be

preserved. To teach this limitation, the Examiner cited column 3, lines 40-47 of Scheussler. Although Scheussler discusses retrieving an identification number from a message, Scheussler is completely silent as to determining whether or not message order is to be preserved. The mere retrieval of identification information does not imply a determination of whether message order should be preserved.

Burgess also fails to discuss the order is which the message is processed. Independent claims 1 and 10 each recite "dispatching each message in accordance with its marker ... such that processing order is preserved when required," and to teach this limitation, the Examiner cited column 4, lines 50-51 of Burgess. Burgess merely describes dispatching data and messages to one or more plug-in listener extensions. There is no teaching within Burgess that a marker is used when dispatching the messages and that the marker is used to preserve processing order when required. Therefore, even if one having ordinary skill in the art would have been motivated to modify Scheussler in view of Burgess, the claimed invention would not have resulted.

With regard to claims 2 and 11, the Examiner cited column 14, lines 56-67 of Scheussler to teach "retaining a list of all markers of messages that are being processed in parallel." Applicants disagree that this cited passage of Scheussler teaches this limitation. Scheussler merely describes looking up ID numbers within an identification database. There is no teaching of retaining a list of markers that are being processed in parallel (i.e., the processing is occurring contemporaneously). Although Scheussler discusses "a collision [that] occurs on a lookup" this collision is a result of a same email address being associated with two users, and there is no

teaching that messages (and thus markers) associated with these two users are being processed in parallel.

With regard to the limitation of "determining whether the marker of a new message is present in the list," since, as noted above, Scheussler fails to maintain a list of marker being processed in parallel, Scheussler cannot teach referring to the list to determine if a marker of a new message is present in the list. The same logic applies to the claimed limitation of "delaying initiating parallel processing of the new message until the marker is no longer in the list." Furthermore, although the Examiner cited column 14, lines 50-67 to teach this limitation, the Examiner's cited passage fails to teach delaying the initiation of parallel process until a marker is not on the list. Therefore, for the reasons stated above, Scheussler fails to teach the limitations recited in claims 2 and 11.

Claims 3 and 12 also refer to the "list," and for reasons stated with regard to claims 2 and 11, Scheussler does not teach the claimed list. Applicants do note, however, that the Examiner referred to column 11, line 52 to column 12, line 3 and Fig. 9 of Burgess to teach the limitations recited in claims 3 and 12. At the outset, Applicants note that in column 12, lines 1-3, Burgess states "[i]n this embodiment, event queue thread 74 dispatches data and messages in event queue file 72 to <u>each</u> of the listener extensions 20" (emphasis added). Independent claims 1 and 10, upon which claims 3 and 12 respectively depend, each recite " dispatching each message ... to <u>one</u> of a plurality of parallel processing threads" (emphasis added). Therefore, the passage in Burgess referred to by the Examiner <u>teaches away</u> from the claimed invention.

Claims 3 and 12 each recite "when message processing by one of the plurality of parallel processing threads completes for a marker, dispatching to said one of the plurality of parallel processing threads the next message in the ordered queue for said marker" (emphasis added). The citation referred to by the Examiner describes keeping an extension list 75 of available listener extensions 20 and an event queue thread 74; however, Burgess fails to state that the event queue thread 74 of Burgess is an ordered queue, as recited in claims 3 and 12. Therefore, for the reasons stated above, Scheussler fails to teach the limitations recited in claims 3 and 12.

Claims 4 and 13 each recite "wherein a predetermined value of the marker indicates that ordering is not required," and the Examiner cited column 2, lines 35-37 of Scheussler to teach this limitation, which is reproduced below:

> The client computer includes a client module that generates a message that includes the identification number and sends the message over the communications medium.

The Examiner also stated that "there was no queuing or 'ordering' to send the message, 'order is not required' to send the message over the communication medium." Apparently, the Examiner is asserting this limitation is inherently disclosed by Scheussler, in this regard Applicants note that inherency may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient to establish inherency.[1] To establish inherency, the extrinsic evidence must make clear that the missing element must necessarily be present in the thing described in the reference, and that the necessity of the feature's presence would be so recognized by persons of ordinary skill.[2] The Examiner has

---

[1] In re Rijckaert, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993) (reversed rejection because inherency was based on what would result due to optimization of conditions, not what was necessarily present in the prior art); In re Oelrich, 666 F.2d 578, 581-82, 212 USPQ 323, 326 (CCPA 1981).

[2] Finnegan Corp. v. ITC, 180 F.3d 1354, 51 USPQ2d 1001 (Fed. Cir. 1999); In re Robertson, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999); Continental Can Co. USA v. Monsanto Co., 20 USPQ 2d 1746 (Fed. Cir. 1991); Ex parte Levy, 17 USPQ2d 1461 (BPAI 1990).

not discharged that burden Thus, the Examiner has not established that this limitation is inherently disclosed by Scheussler. In this regard, the Examiner is also referred to M.P.E.P. § 2112, entitled "Requirements of Rejection Based on Inherency; Burden of Proof."

Even *assuming arguendo* that the Examiner's assertion that "there was no queuing or 'ordering' to send the message" is correct, the Examiner has still failed to establish that Scheussler identically discloses the claimed limitation. The claimed invention recites an association between the predetermined value of the marker and a determination that ordering is or is not required. Using the Examiner's assertion that ordering is not required to send the message, then the Examiner is asserting that Scheussler presumably teaches that, as an automatic default, no queuing is required. If so, then a predetermined value of the mark is not used to indicate that ordering is not required, as recited in claims 4 and 13. Therefore, for the reasons stated above, Scheussler fails to teach the limitations recited in claims 4 and 13.

Thus, for the reasons stated above, even if Scheussler and Burgess were combined in the manner suggested by the Examiner, the claimed invention, as recited in claims 1-20, would not result. Therefore, Applicants respectfully solicit withdrawal of the imposed rejection of claims 1-20 under 35 U.S.C. § 103 for obviousness based upon Scheussler in view of Burgess.

Applicants have made every effort to present claims which distinguish over the prior art, and it is believed that all claims are in condition for allowance. However, Applicants invite the Examiner to call the undersigned if it is believed that a telephonic interview would expedite the prosecution of the application to an allowance. Accordingly, and in view of the foregoing

remarks, Applicants hereby respectfully request reconsideration and prompt allowance of the pending claims.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 09-0461, and please credit any excess fees to such deposit account.

Date: July 5, 2005

Respectfully submitted,

Steven M. Greenberg
Registration No. 44,725
Christopher & Weisberg, P.A.
200 E. Las Olas Blvd., Suite 2040
Fort Lauderdale, FL 33301
Tel: (954) 828-1488
Facsimile: (954) 828-9122
Customer Number 46320